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C O N F I D E N T I A L SECTION 01 OF 03 KATHMANDU 003256

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SUBJECT: NEPAL'S INTERIM CONSTITUTION INITIALED

REF: KATHMANDU 3014

Classified By: Charge d'Affaires Nicholas J. Dean. Reasons 1.4 (b/d).

Summary

11. (SBU) On December 16, the Seven-Party Alliance (SPA) and the Maoists signed the much-anticipated interim constitution. While the 77-page document places the fate of the monarchy in the hands of the constituent assembly, it strips the King of all powers vested in the head of state and transfers them to the Prime Minister. The interim constitution also provides for a unicameral parliament and stipulates that Constituent Assembly elections will be through dual balloting. Once the existing parliament ratifies the interim constitution, an interim parliament will be formed that includes the Maoists. The interim constitution changes the sequence of events as agreed in the November 8 agreement, permitting the promulgation of the interim constitution and the creation of the interim parliament when UN arms monitoring begins rather than waiting until it ends.

Powers of Head of State Transferred from King to Prime Minister

12. (SBU) Nepal's interim constitution, agreed upon by the Seven-Party Alliance (SPA) and the Maoists in the early hours of December 16, transfers the King's powers to the Prime Minister during the interim period and stipulates that the fate of the monarchy will be decided at the first meeting of the Constituent Assembly. In addition, the property of King Gyanendra and his brother, deceased King Birendra, acquired in their capacity as head of state will be nationalized. For all practical purposes, the Prime Minister is now acting as head of state. Specifically, the Prime Minister will chair the Council of Ministers (responsible for appointing ambassadors and commissioners), the Constitutional Council (responsible for appointing the Chief Justice and other senior officials), and the Security Council (responsible for appointing the Chief of Army Staff). The Constitutional and Security Councils have six members, three of whom are appointed by the Prime Minister. (Note: Political party interlocutors have indicated that the SPA and Maoists have agreed that council decisions will be made by consensus only. However, this is not mentioned explicitly in the interim

constitution. End Note.)

Prime Minister vs. Speaker of the Parliament as Head of State

¶3. (C) According to Yubaraj Sangroula, Professor of Law at the Kathmandu Law School and expert legal advisor to the political parties, the authority given to the Prime Minister was agreed upon only after heavy debate between the SPA and Maoists. The Maoists had pushed for the Speaker of the Parliament to be declared head of state while the political parties had pushed for the Prime Minister to be given that title, he said. The Maoists ultimately comprised on this issue in order to achieve other goals, such as explicit mention of the right to employment and land reform.

Election of Constituent Assembly By Dual Ballots

¶4. (SBU) According to the interim constitution, Constituent Assembly elections will be held in June 2007. The body will have 409 elected representatives and 16 appointed representatives from civil society. Of the 409, 205 will be elected on the basis of geographical representation (so-called first-past-the-post) and 204 will be elected on the basis of proportional representation. As such, two ballots will be used: one on which voters will select a particular candidate and another on which voters will select one of the political parties. Parties will be allocated a share of the 204 proportional seats based on the percentage of support given to them on the second ballot. Names will be drawn from party lists, on which, according to the interim statute, 1/3 of the candidates must be women. The interim

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constitution is silent on the inclusion of ethnic minorities within the party lists. Inclusion of 16 civil society members is intended, according to Sangroula, to enhance the capacity of the assembly to deal with technical legal aspects of drafting the permanent constitution.

Diluting the Maoists' Strength

¶5. (C) When asked about the large, and perhaps cumbersome, size of the Constituent Assembly, Sangroula explained that Nepali Congress (NC) and Communist Party of Nepal - United Marxist Leninist (CPN-UML) leaders had agreed on the number of elected representatives as part of a joint strategy to dilute the strength of the Maoists. Their assumption, which Sangroula agreed with, was that the Maoist organization lacked the depth of expertise and international experience of the political parties. Even with a large Maoist representation in the Constituent Assembly, he said, the joint strength and experience of NC and CPN-UML would enable the two parties to better influence the drafting of Nepal's constitution. Sangroula believed that, if NC and CPN-UML worked together, they could complete a permanent constitution within six to seven months after the formation of the Constituent Assembly.

Promulgation of the Constitution and the Interim Parliament

¶6. (SBU) The interim constitution states that the existing parliament will promulgate the document based on a 2/3 majority. Ratification will trigger dissolution of the existing parliament and formation of the interim "legislative parliament." The interim statute reaffirms the earlier November 8 agreement between the SPA and Maoists regarding the composition of the interim parliament. The legislative body will be unicameral and will have 330 members, based primarily on the representation within the existing parliament. Therefore, as such, the NC will retain 75 seats, the CPN-UML will retain 73 seats and the Nepali Congress - Democratic (NC(D)) 42 seats. The SPA and Maoists agreed that

the Maoists would be allocated the same number as the CPN-UML with 73 seats. Additionally, the interim constitution reserves 48 seats to be appointed by the various parties in an effort to make the interim parliament more inclusive of women, "dalits" (untouchables) and ethnic minorities.

Comment

17. (C) Some party members have complained that the SPA gave the Maoists too much. They point in particular to the language regarding the King, the provision of the right to employment and implementation of land reform. One NC(D) leader complained that the SPA's chief negotiator, Home Minister Krishna Prasad Sitaula, is under Indian Government influence and, therefore, too willing to compromise with the Maoists. Local cartoonists have portrayed Sitaula giving away everything, including the clothes on his back, to the Maoists, leaving him only with a "topi" (hat). Fortunately, transferring the King's authority to Prime Minister Koirala ensures that the SPA will continue to shape the government's agenda.

18. (C) Agreement on an interim constitution prior to completion of arms management and cantonment of Maoist combatants has changed the sequence of events the SPA and Maoists agreed upon on November 8 (reftel). Some changes in the sequence were probably inevitable given the unrealistic timetable of the November 8 agreement. According to the December 16 agreement, the interim constitution will be promulgated once UN monitoring of Maoist combatants and their arms begins instead of at the end of that process. The interim parliament will be stood up immediately thereafter. From our perspective, the most important step will be the entry of the Maoists into the interim government. That step will not happen until the entire UN arms monitoring process is complete. Including Maoists in the parliament in the short term might allow the political parties to delay inclusion of the Maoists in an interim government where they

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could have much more influence and power.
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